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FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

2007 OCT -3 PM 2:58

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

EMMY ST. UPERY  
Plaintiff

VS.

CHRISTOPHER S. MURPHY and  
COUNTRY VIEW TRUCKING, LTD.  
Defendants

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§

CIVIL ACTION NO. \_\_\_\_\_

BY EMMY ST. UPERY

SA07CA0796 **FB**

**DEFENDANT COUNTRY VIEW TRUCKING, LTD.'S NOTICE OF REMOVAL**

TO THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT COURT:

Defendant Country View Trucking, Ltd. ("Defendant CVT") files this Notice of Removal of Cause No. 2007-CI-13133, styled *Emmy St. Upery vs. Christopher S. Murphy and Country View Trucking, Ltd.*, in the 285th Judicial District Court of Bexar County, Texas, to the United States District Court for the Western District of Texas, San Antonio Division, pursuant to 28 U.S.C. §§ 1332 and 1441(b), and Defendant shows the Court as follows:

1. On August 29, 2007, Plaintiff filed her Original Petition against Defendant Murphy and Defendant CVT in the 285th Judicial District Court of Bexar County, Texas.

2. On August 31, 2007, citation to Defendant Murphy was issued by the Bexar County District Clerk and sent to Defendant Murphy that same day, via International Registered Mail. On September 27, 2007, Defendant Murphy was served with citation and Plaintiff's Original Petition, via his acceptance of delivery of the foregoing certified mail.

3. On August 31, 2007, citation to Defendant CVT was issued by the Bexar County District Clerk. On September 4, 2007, the Texas Secretary of State, as a purported agent of service of process of Defendant CVT, received the foregoing citation and Plaintiff's Original

Petition, via certified mail, return receipt requested, mailed to it by Plaintiff's counsel. On September 28, 2007, Defendant CVT filed its Special Appearance, objecting to personal jurisdiction of Texas courts over it and its property.

4. Pursuant to 28 U.S.C. § 1446(b), Defendant CVT files this Notice of Removal within thirty (30) days after the Texas Secretary of State's receipt of Plaintiff's Original Petition.

5. Pursuant to 28 U.S.C. §§ 1332(a) and 1441(b), this action is a civil action that is removable to this Court. Specifically, complete diversity of citizenship exists between the parties, as Defendants Murphy and CVT are not citizens of the State of Texas, and the amount in controversy exceeds \$75,000.00, exclusive of interest, costs, and attorneys' fees.

6. Plaintiff is a citizen of the State of Texas.

7. Defendant Murphy is not a citizen of the State of Texas. At all relevant times, including the time of the commencement of this action in state court, Defendant Murphy was, and still is, a citizen and resident of the Country of Canada, Province of Prince Edward Island, County of Prince.

8. Defendant CVT is not a citizen of the State of Texas. At all relevant times, including the time of the commencement of this action in state court, Defendant CVT was a corporation which has been incorporated under the laws of the Country of Canada, with its principal place of business located in the Country of Canada, Province of Prince Edward Island, County of Prince, at 3979 Route 1A, RR#2, Travellers Rest, Prince Edward Island, Canada.

9. Defendant CVT has a good faith belief that the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs. Plaintiff's civil action against Defendant is based on a November 1, 2006 collision in which Plaintiff was operating her personal motor vehicle and Defendant Murphy was operating his own tractor-trailer rig. In her civil suit,

Plaintiff asserts that, on November 1, 2006, Defendant Murphy negligently “swerved right and entered into Plaintiff’s lane of traffic ... sideswiped and struck the driver’s side of Plaintiff’s vehicle ... then proceeded to push Plaintiff’s vehicle for a considerable distance ... [E]ventually, Plaintiff’s vehicle was ejected from under Defendant’s tractor, and thrust into the center concrete median.” *See* Plaintiff’s Original Petition, at pp. 2-3, § IV. Plaintiff further asserts that, as a result of the November 1, 2006 accident, she has suffered “serious personal injury and property damage.” *See id.*, at p. 3, § IV. Correspondingly, Plaintiff asserts claims for the following alleged resultant damages: physical pain, in the past and future; reasonable and necessary medical care and expenses, in the past and future; physical impairment, in the past and future; lost wages; loss of future earning capacity; mental anguish, in the past and future; and property damages to her motor vehicle. *See id.*, at p. 4, § VII.

10. Pursuant to 28 U.S.C. §1446(a), Defendant Murphy consents to the removal of this case to federal court. Defendant Murphy’s Notice of Consent to Removal is attached hereto as Exhibit “1.”

11. Pursuant to 28 U.S.C. §1446(a), certified copies of the docket sheet and all process and pleadings comprising the state court’s file for Cause Number 2007-CI-13133 filed by Plaintiff in the 285th Judicial District Court of Bexar County, Texas are attached hereto as Exhibits “2” and “3,” respectively.

12. Pursuant to 28 U.S.C. §1441(a), venue is proper in this United States District Court because the state court in which the action has been pending is located within the Western District of Texas, San Antonio Division.

13. Upon filing this Notice of Removal, Defendant CVT shall give written notice of the filing of this notice to Plaintiff, as required by 28 U.S.C. § 1446(d).

14. Upon filing this Notice of Removal, Defendant will file a copy of this notice with the Clerk of the 285th Judicial District Court of Bexar County, Texas, as required by 28 U.S.C. § 1446(d).

15. Plaintiff did not demand a jury trial in the state court action.

THEREFORE, Defendant CVT removes Cause No. 2007-CI-13133, styled *Emmy St. Upery vs. Christopher S. Murphy and Country View Trucking, Ltd.*, in the 285th Judicial District Court of Bexar County, Texas, to the United States District Court for the Western District of Texas, San Antonio Division, pursuant to the statutes and in conformance with the requirements set forth in 28 U.S.C. §§ 1332, 1441, and 1446, on this the 2nd day of October, 2007.

Respectfully submitted,

**O'CONNELL & BENJAMIN, L.L.P.**

By: \_\_\_\_\_

**Keith B. O'Connell**

Attorney-in-Charge

State Bar No. 01452000

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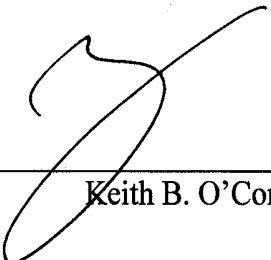
Telecopier: (210) 824-9429

**ATTORNEYS FOR DEFENDANT  
COUNTRY VIEW TRUCKING, LTD.**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served on the following counsel of record on this the 22 day of October, 2007, via *certified mail, return receipt requested*, to:

Mr. Robert L. Wilson, III  
RL Wilson, P.C.  
115 E. Travis, Suite 1230  
San Antonio, Texas 78205



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Keith B. O'Connell